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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,365	07/10/2003	Koji Nakamichi	FUJY 20.508	6742
26304	7590	04/09/2007		
KATTEN MUCHIN ROSENMAN LLP			EXAMINER	
575 MADISON AVENUE			ZAIDI, SYED	
NEW YORK, NY 10022-2585			ART UNIT	PAPER NUMBER
			2609	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/618,365

Applicant(s)

NAKAMICHI ET AL.

Examiner

Syed Zaidi

Art Unit

2609

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10 Aug 2005
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Priority**

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

The information disclosure statement submitted on 08/10/2005 has been considered by the Examiner and made of record in the application file.

### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform to current U.S. practice. They appear to be a literal translation into English

from a foreign document and are replete with grammatical and idiomatic errors.

In claim 1, the limitation determining a ratio at which traffic to an ingress node is distributed to paths between nodes is vague and indefinite. Furthermore, it is unclear what the ratio refers to.

Claims 1,7,13 and 14 are confusing as written. It is unclear what nodes that correspond to within a traffic engineering section within a network are.

Claims 2-6,8-12 and 15 are rejected because they depend from rejected claims.

#### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966) that are applied for establishing a

background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 1-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bays (U.S.Pub # 2002/01413 A1)** in view of **Meempat et al. (US Patent # 6,904,017 B1)**.

Consider claim 1, **Bays** clearly show and disclose

a wide area load sharing control system comprising: a module (Paragraph 0066) determining a ratio (it is unclear what the ratio refers to) at which an input traffic to ingress edge nodes (Paragraph 0065) is distributed to a plurality of paths (Paragraph 0085) set up between said ingress edge nodes (Paragraph 0088 and system 80) and egress edge nodes (Paragraph 0088 and system 90) that correspond to within a traffic engineering section (Paragraphs, 0073 0074, 0083) within a network; and a module indicating which unit, a sharing control unit (Paragraph 0028) corresponding to said ingress edge nodes or other concentration control unit (Paragraph 0072) executes a process of determining the ratio at which the input traffic to said ingress edge nodes is distributed to the plurality of paths. However, **Bays** fail to disclose the edge nodes is distributed to the plurality of paths.

In the same field of endeavor, **Meempat et al.** clearly show and disclose the edge nodes is distributed to the plurality of paths (column 2 lines 53-65).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the implement and effective load balanced distribution of network data packets as taught

by **Bays**, in the method of **Mempat et al.** for the purpose of achieving the edge nodes is distributed to the plurality of paths in wide area load sharing control system.

**Consider claim 2**, and as applied to claim 1 above, **Bays**, as modified by **Meempat et al.** clearly show a wide area load sharing control system, wherein said indicating module indicates which unit, said sharing control unit or said concentration control unit, takes charge of the determining process (Paragraphs 0068, 0069) in accordance with load states of said sharing control unit and of said concentration control unit.

**Consider claim 3**, and as applied to claim 1 above, **Bays**, as modified by **Mempat et al.** clearly show A wide area load sharing control system according to claim 1, wherein said concentration control unit is a network control device (Paragraph 0066) concentratedly controlling a plurality (Paragraph 0064) of nodes including said ingress edge nodes and said egress edge nodes existing in the traffic engineering section within the network.

**Consider claim 4**, and as applied to claim 3 above, **Bays**, as modified by **Mempat et al.** clearly show a wide area load sharing control system, wherein said indicating module is provided in a state monitoring device (Paragraph 0040, 0072, 0078) outside said network control device (Paragraph 0028).

**Consider claim 5**, and as applied to claim 1 above **Bays**, as modified by **Mempat et al.** clearly show a wide area load sharing control system, wherein the network (Paragraph 0028) is an MPLS-based label switching (Paragraph 0072) network.

**Consider claim 6**, and as applied to claim 1 above **Bays**, as modified by **Mempat et al.** clearly show a wide area load sharing control system according to claim 1, wherein when said sharing control unit corresponding to said ingress edge nodes gathers statistic information (Paragraph 0039) showing a load state in the network, said sharing control unit gathers directly the statistic information from said nodes capable (Paragraph 0031,



0035, 0036) of using a notification message based on a specified protocol, and gathers, through said concentration control unit, the statistic information from said nodes incapable (Paragraph 0030) of using the notification message based on the specified protocol.

**Consider claim 7, Bays.** clearly show and disclose

A wide area load sharing control a system comprising: a statistic information gathering module (it is unclear what method is used for information gathering) obtaining from respective nodes, as statistic information (it is unclear what method is used for information gathering) a traffic state (Paragraph 0083, 0087) of links connected to said respective nodes in a network; a route determining module (it is unclear what method is used for route (determining) based on the obtained statistic information (Paragraph 0039) at least one route (Paragraph 0040) for extending a plurality of paths between ingress edge nodes and egress edge nodes (Paragraph 0088) that correspond to within a traffic engineering section in the network; and a load sharing determining module (Paragraph 0018) determining, based on the obtained statistic information, a ratio (it is unclear what method is used for information gathering statistic information

gathering) at which a traffic should be distributed to respective paths (Paragraph 0020) on the determined route, wherein active modules among said module, said route determining module and said load sharing determining module are switched over (Paragraph 0072) to between said ingress edge nodes and said network control device concentratedly controlling said respective nodes, mutually. However, **Bays**, fails to disclose statistic information, a traffic state of links connected to say respective nodes in a network.

In the same field of endeavor, **Mempat et al.** clearly show and disclose a statistic information-gathering module obtaining from respective nodes, as statistic information, a traffic state of links connected to said respective nodes in a network (Column 13 line 43-50).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the implement and effective statistics collected by the ingress processors (Paragraph 0068) of network data packets as taught by **Bays**, in the method of **Mempat et al.** for the purpose of achieving a statistic information, a traffic state of links connected to said respective nodes in a network in wide area load sharing control system.

**Consider claim 8**, and as applied to claim 7 above, **Bays**, as modified by **Mempat et al.** clearly show and disclose a wide area load sharing control a system, wherein said ingress edge node includes an allocating module (Paragraph 0038) allocating packets arrived at, to paths on said route on the basis of the ratio, indicated by said load sharing determining module, at which the traffic should be distributed to the paths on the route.

**Consider claim 9**, and as applied to claim 7 above, **Bays**, as modified by **Mempat et al.** clearly show and disclose a wide area load sharing control a system, A wide area load sharing control system, further comprising a state monitoring device including: a module gathering and judging the load states (Paragraph 0006) of said ingress edge nodes and said network control device; and an indicating module (Paragraph 0022) switching over active modules among said statistic information gathering module, said route determining module and said load sharing determining module to between said ingress edge nodes and said network control device in accordance with the load states, mutually. However, **Bays**, fails to

disclose statistic information, a traffic state of links connected to said respective nodes in a network and monitoring devices.

In the same field of endeavor, **Mempat et al.** clearly show and disclose traffic state of links connected to said respective nodes in a network and monitoring devices traffic state of links connected to said respective nodes in a network (Column 13 line 43-50) and monitoring devices.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the implement and effective statistics collected by the ingress processors of network data packets and network and monitoring as taught by **Mempat et al.** in the method of **Bay**, for the purpose of achieving a wide area load sharing control system.

**Consider claim 10**, and as applied to claim 7 above, **Bays**, as modified by **Meempat et al.** clearly shows wherein wide area load sharing control system, wherein when said ingress edge nodes gather the statistic information showing a load state (Paragraph 0015) within the network, said ingress edge nodes gather directly the statistic information from said nodes

capable (Paragraph 0085) of using a notification message based on a specified protocol, and gather, through said network control device, the statistic information from said nodes incapable (Paragraph 0046) of using the notification message based on the specified protocol.

**Consider claim 11**, and as applied to claim 7 above, **Bays**, as modified by **Meempat et al.** clearly show wherein if said ingress edge node does not include said load sharing (Paragraphs 0015, 0018) determining module, said load sharing determining module of said network control device is made to operate (Paragraph 0090).

**Consider claim 12**, and as applied to claim 7 above, **Bays**, as modified by **Meempat et al.** clearly show and disclose a wide area load sharing control system, wherein wherein if said ingress edge node does not include said load sharing (Paragraphs 0015, 0018) determining module, said load sharing determining module of said network control device is made to operate (Paragraph 0090).

**Consider claim 13, Meempat et al. as modified by Bays, clearly shows and disclose a wide area load sharing control a method comprising:**  
A wide area load sharing control method comprising: determining a ratio at which an input traffic to ingress edge nodes is distributed to a plurality of paths set up between said ingress edge nodes and egress edge nodes that correspond to within a traffic engineering section within a network; and indicating which unit, a sharing control unit corresponding to said ingress edge nodes or other concentration control unit, executes a process of determining the ratio at which the input traffic to said ingress edge nodes is distributed to the plurality of paths (Paragraph 0046).

**Consider claim 14, Bays, clearly shows and disclose**  
a wide area load sharing control a method comprising: obtaining from respective nodes, a wide area load sharing control method comprising: obtaining from respective nodes, as statistic information, a traffic state (Paragraph 0039) of links connected to said respective nodes in a network, determining, based on the obtained statistic information, at least one route (Paragraph 0040) for extending a plurality of paths between ingress edge nodes and egress edge nodes that correspond to within a traffic

engineering section (Paragraphs 0064, 0065) in the network; determining, based on the obtained statistic information, a ratio (it is unclear what the ratio refers to) at which a traffic should be distributed to respective paths on the determined route (Paragraph 0047) and switching over processing modules (Paragraph 0072) of said respective steps to between said ingress edge nodes and control device concentratedly controlling said respective nodes, mutually (Paragraph 0067, 0069, 0070).

**Consider claim 15**, and as applied to claim 14 above, **Bays**, as modified by **Pham et al.** clearly shows and disclose a wide area load sharing control a method, further comprising: gathering and judging the load states (Paragraphs 0073, 0074) of said ingress edge nodes and said control device (Paragraph 0069) and giving an indication of switching over (Paragraph 0072) the processing modules to between said ingress edge nodes and said control device mutually in accordance with the load states.

### **Conclusion**

Any response to this Office Action should be **faxed to (571) 273-8300**  
**or mailed to:**

Commissioner for Patents  
P.O. Box 1450  
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**Hand-delivered responses should be brought to:**

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Syed Zaidi whose telephone number is 571-274-1779. The examiner can normally be reached on 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rafael Perez-Gutierrez can be reached on 571-272-7915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Syed S. Zaidi  
S.S.Z/ssz  
Feb 14 2007